

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

(1) EMMA ASBERRY, )  
vs. )  
Plaintiff, )  
vs. )  
(1) BOARD OF COUNTY )  
COMMISSIONERS FOR TULSA )  
COUNTY, )  
Defendants. )

FILED

DEC 22 2014

Phil Lombardi, Clerk

U.S. DISTRICT COURT

14 CV - 765 TCK - PJC

Case No.

**NOTICE OF REMOVAL**

TO: PLAINTIFF EMMA ASBERRY AND HER  
ATTORNEYS OF RECORD

Defendants, and the Board of County Commissioners of Tulsa County (“BOCC”) by and through their undersigned counsel, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, hereby notify this Court that it is removing the above-captioned action currently pending in the District Court of Tulsa County, Oklahoma to the United States District Court for the Northern District of Oklahoma. In support of this Notice of Removal, Defendants state as follows:

1. Plaintiff, Emma Asberry, filed her Petition against Defendants in the District Court for Tulsa County, Oklahoma on November 25, 2014 (the “State Court Lawsuit”). Defendants received service of Plaintiff’s Petition on December 3, 2014. Thus, this Notice of

Removal is filed with this Court within thirty (30) days of the receipt of Plaintiff's Complaint (or Petition) as required by 28 U.S.C. § 1446(b).

2. Defendants are filing a Status Report of Removed Action along with the filing of this Notice of Removal. Defendants will also be filing Answers in this Court within days of filing this Notice of Removal. Pursuant to LCvR 81.2, clear and legible copies of all documents filed or served in the case are attached as follows: Plaintiff's Petition as Exhibit 1, copy of the summons served upon the BOCC as Exhibits 2 and a copy of the Docket Sheet as Exhibit 3.

3. The basis for removal to federal court is federal question jurisdiction pursuant to 28 U.S.C. § 1331.

4. In accordance with 28 U.S.C. § 1446(d), Defendants are promptly filing a copy of this Notice of Removal (without exhibits) with the Clerk of the District Court for Tulsa County, Oklahoma.

5. In accordance with 28 U.S.C. § 1446(d), Defendants are also giving written notice to Plaintiff by promptly serving this Notice of Removal upon Plaintiff's counsel.

6. As required by 28 U.S.C. § 1441, Defendants seek to remove this case to the United States District Court for the Northern District of Oklahoma, which is the District Court embracing the place where the State Court Lawsuit has been filed.

#### FEDERAL QUESTION JURISDICTION

7. Plaintiff's Petition makes claims under Title VII of the Civil Rights Act, as amended 42 U.S.C § 2000-2 *et. seq.* See Plaintiff's Petition, Ex. 1.

8. Accordingly, Plaintiff has invoked this Court's original jurisdiction on "a claim or right arising under the Constitution, treaties or laws of the United States." 28 U.S.C. §§ 1331, 1441.

9. Venue lies in this Court because Plaintiff's action is pending in this district and division. *See* 28 U.S.C. § 1441(a).

WHEREFORE, Defendant BOCC respectfully request that the above-captioned action now pending in the District Court of Tulsa County, Oklahoma be removed to the District Court for the Northern District of Oklahoma, and that said District Court assume jurisdiction of this action and enter such other and further orders as may be necessary to accomplish the requested removal and promote the ends of justice.

Dated this 22<sup>nd</sup> day of December, 2014.

Respectfully submitted,

*/s/ Matney M. Ellis*   
Matney M. Ellis, OBA #21653  
Tulsa County District Attorney  
500 South Denver, Suite 800  
Tulsa, Oklahoma 74103 (918)  
596-4814  
(918) 596-4804 – facsimile  
[matney.ellis@tulsacounty.org](mailto:matney.ellis@tulsacounty.org)

**ATTORNEY FOR DEFENDANT BOARD OF  
COUNTY COMMISSIONERS OF TULSA COUNTY**

**CERTIFICATE OF SERVICE**

I hereby certify that on December 22, 2014, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Daniel E. Smolen, Esq.  
danielsmolen@ssrok.com

And I served the attached document by regular mail, postage prepaid, on the following:

Daniel E. Smolen  
Smolen, Smolen & Roytman, PLLC  
701 South Cincinnati Avenue  
Tulsa, OK 74119

/s/ Matney M. Ellis  
Matney M. Ellis



STATE OF OKLAHOMA  
TULSA COUNTY  
IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA  
2014 DEC -3 AM 9:43

489  
DISTRICT COURT  
FILED

NOV 25 2014

EMMA ASBERRY,

Plaintiff,

vs.

BOARD OF COUNTY

COMMISSIONERS OF TULSA  
COUNTY

Defendant.

ATTY PAT KEY

Attorney Lien Claimed

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA COUNTY

CUST 2014-04530

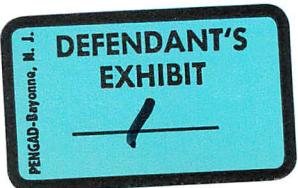
DAMAN CANTRELL

PETITION

COMES NOW the Plaintiff, Emma Asberry, by and through her attorney of record, Daniel E. Smolen, of *Smolen, Smolen & Roytman, PLLC*, and brings this action against the Defendant, Board of County Commissioners for Tulsa County for violations of Plaintiff's constitutionally protected rights arising out of her employment and termination by said Defendant. In support of her Petition, Plaintiff states as follows:

PARTIES, JURISDICTION & VENUE

1. This is an action for damages and to secure protection of and to redress deprivation of rights secured by Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000-2, hereinafter ("Title VII").
2. Plaintiff, Emma Asberry, an African American female and resident of the State of Oklahoma, filed a charge of discrimination against the Defendant with the Equal Employment Opportunity Commission ("EEOC"). Plaintiff complained to the EEOC of discrimination based on her race as well as retaliation under Title VII.



3. Plaintiff received a Notice of Right to Sue on or around October 2, 2014, and this Petition has been filed within ninety (90) days of the receipt of the Notice of Right to Sue.
4. As such, Plaintiff has exhausted her available administrative remedies and has complied fully with all prerequisites in this Court under Title VII.
5. Compensatory damages are sought pursuant to 42 U.S.C. § 2000e-5(g).
6. Punitive damages are sought pursuant to 42 U.S.C. § 1981-A.
7. Costs and attorney's fees may be awarded pursuant to 42 U.S.C. § 2000e-5(g).
8. Plaintiff is a resident of Tulsa County, State of Oklahoma.
9. Defendant, Board of County Commissioners of Tulsa County, operates in Tulsa County and regularly employs more than fifteen (15) employees.
10. The incidents and occurrences giving rise to Plaintiff's claims occurred in Tulsa County, State of Oklahoma.
11. Therefore, jurisdiction and venue properly lie in this Court.

#### **FACTS COMMON TO PLAINTIFF'S CLAIMS**

12. Plaintiff incorporates the preceding paragraphs as if re-alleged.
13. Plaintiff began his employment with the Defendant in December 2003 as a building operations janitor. Plaintiff was a loyal employee for over ten years.
14. In April or May of 2011, the work schedule was changed for the Plaintiff's shift requiring the Plaintiff to work until 1:00 a.m. instead of 11:30 p.m. The Plaintiff indicated to her supervisor, Sean Gardner, that this would be a problem for her due to childcare requirements. Mr. Gardner instructed her to try to work it out and to speak with Rick and Jim, the head of operations.

15. The Plaintiff spoke to these individuals and was also able to procure childcare until 1:00 a.m. with the exception of Fridays. The Plaintiff got this arrangement approved with Sean and Rick and used PTO and vacation for the time on Fridays that she had to leave before 1:00 a.m., as she was instructed by her supervisor.
16. In August of 2013, the Plaintiff witnessed an argument between Mr. Gardner and an African American employee, Ryan. During the argument, Ryan accused Mr. Gardner of trying to get rid of all of the black employees. Mr. Gardner responded to this question in the affirmative.
17. The following day, Mr. Gardner asked the Plaintiff to write a statement about the altercation and also gave her Dan Belding's phone number and asked her to call him. The Plaintiff obeyed and called Mr. Belding, who also requested she write a statement. The Plaintiff wrote a statement describing what she witnessed and turned it into Ken Anderson.
18. After the Plaintiff turned her statement in, describing the discriminatory comment she witnessed, Ken Anderson and Sean Gardner stopped speaking to her. For the first time since the schedule was changed in 2011 and the Plaintiff was requesting time off to cover the hours in the week she could not stay until 1:00 a.m., her request was denied and was repeatedly denied thereafter
19. After submitting the statement and experiencing poor treatment from her supervisors, the Plaintiff submitted a formal grievance on February 6, 2014 to Human Resources complaining that she felt harassed and that she was being retaliated against for her statement regarding Sean Gardner.

20. The following day, on February 7, 2014, the Plaintiff was terminated from her employment in retaliation for submitting her written grievance the previous day, which continued from the original written statement she gave in August 2013.

**FIRST CLAIM FOR RELIEF**  
**DISCRIMINATION BASED ON RACE (TITLE VII)**

19. Plaintiff incorporates the preceding paragraphs as if re-alleged.

20. By retaliating against the Plaintiff and terminating the Plaintiff's employment, the Defendant violated Title VII of the Civil Rights Act of 1964.

WHEREFORE, Plaintiff prays for judgment against Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement;
- b. Compensatory damages for her mental anguish, pain and suffering and other non-pecuniary losses;
- c. Punitive damages for the intentional and knowing acts of discrimination committed by Defendant's management and executives;
- d. Her attorney fees and the costs and expenses of this action;
- e. Equitable Relief
- f. Such other relief as the Court deems just and equitable.

**SECOND CLAIM FOR RELIEF**  
**42 U.S.C. § 1981**

21. Plaintiff incorporates the preceding paragraphs as if re-alleged.

22. By continually subjecting Plaintiff to retaliatory acts, denying earned vacation and PTO and ultimately terminating her employment, Defendant and its agents have violated 42 U.S.C §1981.

WHEREFORE, Plaintiff prays for judgment against Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement;
- b. Compensatory damages for her mental anguish, pain and suffering and other non-pecuniary losses;
- c. Punitive damages for the intentional and knowing acts of discrimination committed by Defendant's management and executives;
- d. Her attorney fees and the costs and expenses of this action;

- e. Equitable Relief
- f. Such other relief as the Court deems just and equitable.

**THIRD CLAIM FOR RELIEF**  
**RETALIATION IN VIOLATION OF TITLE VII**

23. Plaintiff incorporates the preceding paragraphs as if re-alleged.

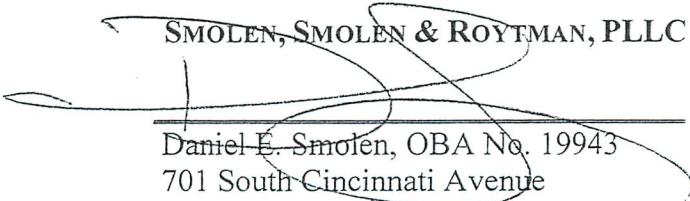
24. The Plaintiff engaged in protected activity when she reported discriminatory comments made by her supervisor and again when she reported harassment in violation of the County's anti-harassment policy.

25. The Plaintiff suffered adverse employment actions, including termination of her employment, shortly after making her complaints and in retaliation for those complaints. As such, the Defendant has violated Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000-2.

WHEREFORE, Plaintiff prays for judgment against Defendant for:

- 26. Back pay and lost benefits; front pay until normal retirement;
- 27. Compensatory damages for her mental anguish, pain and suffering and other non-pecuniary losses;
- 28. Punitive damages for the intentional and knowing acts of discrimination committed by Defendant's management and executives;
- 29. Her attorney fees and the costs and expenses of this action;
- 30. Equitable Relief
  - a. Such other relief as the Court deems just and equitable.

Respectfully submitted,

  
SMOLEN, SMOLEN & ROYTMAN, PLLC  
Daniel E. Smolen, OBA No. 19943  
701 South Cincinnati Avenue  
Tulsa, OK 74119  
(918) 585-2667  
(918) 585-2669 (Fax)  
Attorneys for Plaintiff

4041

IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA  
STATE OF OKLAHOMA

STATE OF OKLAHOMA  
TULSA COUNTY  
RECEIVED

EMMA ASBERRY,

) CJ-2014-04530  
Case No.

Plaintiff,

vs.

Attorney Lien Claimed

BOARD OF COUNTY  
COMMISSIONERS OF TULSA  
COUNTY

PAT KEY

TULSA COUNTY CLERK

Defendant.

RECEIVED

DEC 03 2014

ORIGINAL SUMMONS

District Attorney  
Dist #14

SERVE BY U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Board of County Commissioners of Tulsa County  
c/o Tulsa County Clerk  
Tulsa County Administration Bldg.  
500 S. Denver  
Tulsa, OK 74103-3832

To the above-named Defendant(s)

You have been sued by the above named plaintiff(s), and you are directed to file a written answer to the attached petition and order in the court at the above address within twenty (20) days after service of this summons upon you exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the plaintiff. Unless you answer the petition within the time stated judgment will be rendered against you with costs of the action.

Issued this 25<sup>th</sup> day of November, 2014  
SALLY HOWE SMITH, COURT CLERK  
County Court Clerk  
By Carl A Denney  
Deputy Court Clerk

(Seal)

This summons and order was served on

(Signature of person serving summons)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THIS SUMMONS.



CJ-2014-04530  
Return ORIGINAL to filing  
PERSONAL SERVICE

I certify that I received the foregoing Summons the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and that I delivered a copy of said Summons with a copy of the Petition to the following named defendant personally in \_\_\_\_\_ County, \_\_\_\_\_ at the address and on the date set forth opposite each name, to-wit:

2014 DEC -3 AM 9:43

Name of Defendant	Address	Date of Service
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PAT KEY  
TULSA COUNTY CLERK**USUAL PLACE OF RESIDENCE**

I certify that I received the foregoing Summons on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and that on \_\_\_\_\_, I served \_\_\_\_\_ by leaving a copy of said summons with a copy of the attached Petition at \_\_\_\_\_, which is his/her dwelling house or usual place of abode, with \_\_\_\_\_, a person then residing therein, who is fifteen (15) years of age or older.

**NOT FOUND**

Received this Summons this \_\_\_\_\_ day of \_\_\_\_\_, 2014. I certify that the following persons of the defendant within named not found in said County:

**FEES**

Fee for service \$ \_\_\_\_\_, Mileage \$ \_\_\_\_\_.

Total \$ \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

By:

Sheriff of \_\_\_\_\_ County,

**AFFIDAVIT**

I, \_\_\_\_\_, the undersigned, under oath, do say that I served this Summons and made the return thereon, according to law that I am duly authorized to make this affidavit so help me God.

Sheriff of \_\_\_\_\_ County,

Subscribed to and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

My Commission Expires: \_\_\_\_\_

Seal

Notary Public

**CERTIFICATE OF SERVICE BY MAIL**

I certify that I mailed copies of the foregoing summons with a copy of the Petition to the following named defendant at the address shown by certified mail, addressee only, return receipt requested, on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and receipt thereof on the dates shown:

Defendant	Address Where Served	Date
Received	Signature of person mailing summons	



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## IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA

EMMA ASBERRY, Plaintiff, v. BOARD OF COUNTY COMMISSIONERS OF TULSA COUNTY, Defendant.	No. CJ-2014-4530 (Civil relief more than \$10,000: WRONGFUL TERMINATION)
	Filed: 11/25/2014
	Judge: Cantrell, Daman H.

### Parties

ASBERRY, EMMA , Plaintiff  
BOARD OF COUNTY COMMISSIONERS OF TULSA COUNTY , Defendant

### Attorneys

**Attorney**  
SMOLEN, DANIEL E(Bar # 19943)  
701 S. CINCINNATI  
TULSA, OK 74119

**Represented Parties**  
ASBERRY, EMMA

### Events

Event	Party	Docket	Reporter
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### Issues

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket.

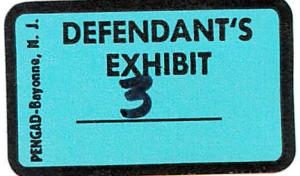
#### Issue # 1.

Issue: WRONGFUL TERMINATION  
(TERMINATE)  
Filed by: ASBERRY, EMMA  
Filed Date: 11/25/2014  
Disposition Information:

Party Name:

Defendant: BOARD OF COUNTY COMMISSIONERS OF  
TULSA COUNTY

Pending.



### Docket

Date	Code	Count	Party	Serial #	Entry Date		
11-25-2014	TEXT	1		92083769	Nov 25 2014 3:55:32:137PM	-	\$ 0.00

## CIVIL RELIEF MORE THAN \$10,000 INITIAL FILING.

11-25-2014	TERMINATE	-	92083771	Nov 25 2014 3:55:32:587PM	Realized	\$ 0.00
WRONGFUL TERMINATION						
11-25-2014	DMFE	-	92083772	Nov 25 2014 3:55:32:647PM	Realized	\$ 2.00
DISPUTE MEDIATION FEE(\$ 2.00)						
11-25-2014	PFE1	-	92083773	Nov 25 2014 4:14:14:727PM	Realized	\$ 163.00
PETITION(\$ 163.00) <u><a href="#">Document Available (#1027976811)</a></u>						
11-25-2014	PFE7	-	92083774	Nov 25 2014 3:55:32:647PM	Realized	\$ 6.00
LAW LIBRARY FEE(\$ 6.00)						
11-25-2014	OCISR	-	92083775	Nov 25 2014 3:55:32:647PM	Realized	\$ 25.00
OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 25.00)						
11-25-2014	CCADMIN02	-	92083776	Nov 25 2014 3:55:32:647PM	Realized	\$ 0.20
COURT CLERK ADMINISTRATIVE FEE ON \$2 COLLECTIONS(\$ 0.20)						
11-25-2014	OCJC	-	92083777	Nov 25 2014 3:55:32:647PM	Realized	\$ 2.00
OKLAHOMA COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND(\$ 2.00)						
11-25-2014	OCASA	-	92083778	Nov 25 2014 3:55:32:647PM	Realized	\$ 5.00
OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES(\$ 5.00)						
11-25-2014	CCADMIN04	-	92083779	Nov 25 2014 3:55:32:647PM	Realized	\$ 0.50
COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 0.50)						
11-25-2014	LTF	-	92083780	Nov 25 2014 3:55:32:747PM	Realized	\$ 10.00
LENGTHY TRIAL FUND(\$ 10.00)						
11-25-2014	SMF	-	92083781	Nov 25 2014 3:55:32:787PM	Realized	\$ 5.00
SUMMONS FEE (CLERKS FEE)(\$ 5.00)						
11-25-2014	SMIMA	-	92083782	Nov 25 2014 3:55:32:817PM	Realized	\$ 0.00
SUMMONS ISSUED - MAILED BY ATTORNEY						
11-25-2014	TEXT	-	92083770	Nov 25 2014 3:55:32:297PM	-	\$ 0.00
OCIS HAS AUTOMATICALLY ASSIGNED JUDGE CANTRELL, DAMAN H. TO THIS CASE.						
11-25-2014	ACCOUNT	-	92083795	Nov 25 2014 3:56:14:417PM	-	\$ 0.00
RECEIPT # 2014-2978900 ON 11/25/2014. PAYOR:SMOLEN SMOLEN TOTAL AMOUNT PAID: \$218.70. LINE ITEMS: CJ-2014-4530: \$168.00 ON AC01 CLERK FEES. CJ-2014-4530: \$6.00 ON AC23 LAW LIBRARY FEE.						

12/15/2014 OCIS Case Summary for CJ-2014-4530- ASBERRY, EMMA v. BOARD OF COUNTY COMMISSIONERS OF TULSA COUNTY (Tulsa County Distri...

CJ-2014-4530: \$0.70 ON AC31 COURT CLERK REVOLVING FUND.

CJ-2014-4530: \$5.00 ON AC58 OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES.

CJ-2014-4530: \$2.00 ON AC59 OKLAHOMA COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND.

CJ-2014-4530: \$2.00 ON AC64 DISPUTE MEDIATION FEES.

CJ-2014-4530: \$25.00 ON AC79 OCIS REVOLVING FUND.

CJ-2014-4530: \$10.00 ON AC81 LENGTHY TRIAL FUND.

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End of Transmission.